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ILGA-Europe
2019-03

py Kondakov , A 2019 , The Censorship Propaganda Legislation in Russia
State-sponsored homophobia . 13 edn , vol. 2019 , State Sponsored Homophobia ,
ILGA-Europe , pp. 213-215 .

<http://hdl.handle.net/10138/304543>

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STATE-SPONSORED HOMOPHOBIA

2019

13th Edition

LUCAS RAMÓN MENDOS

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The Censorship "Propaganda" Legislation in Russia

By Alexander Kondakov.⁵⁷

In June 2013, Russian Parliament (the State Duma) adopted the bill 135-FZ meant to "protect children from information that promotes denial of traditional family values."⁵⁸ This piece of legislation amended several federal laws and the Code of Administrative Offences of the Russian Federation with the final purpose to ban from public access something called "propaganda of non-traditional sexual relations".

Most importantly, the bill adds Article 6.21 to the Administrative Code that establishes responsibility for dissemination of information about "non-traditional sexual relations" punishable by fines (for citizens and officials), fines and suspension of organizational activities (for entities) or fines and deportation (for foreign nationals and stateless persons).⁵⁹

This law does not deliver on criminal liability; it is a misdemeanour that has a specific legal procedure and different legal consequences in comparison to criminal law. Substantially, the "propaganda" law is a censorship legislation that limits people's freedom of expression. It simply prohibits certain information from being part of the commonly accessible domain.

First attempts to ban "homosexual" propaganda

Initially, the bill was introduced to the Duma in 2012 by regional parliamentarians from the Novosibirsk branch of the United Russia Party. Their proposition was more articulate as they sought to ban "propaganda of homosexuality" just like in a dozen other regions across Russia where similar legislation was already in place.⁶⁰ The first in

line was the Ryazan region, where the propaganda bill was introduced as early as 2006. In that period at the federal level, Member of Parliament Aleksandr Chuev had been trying to criminalise "propaganda of homosexual lifestyle" for some years after unsuccessful attempts to criminalise "sodomy" beforehand. Wording of his legislation drafts (also proved unsuccessful due to the criminal nature of his legal initiative) were mostly inspired by decisions of the Constitutional Court of the Russian Federation regarding national family values, as well as by the US evangelicals' doctrine of "traditional family values".⁶¹

This language was used in drafting the current law with the purpose of avoiding overtly mentioning "homosexuality" so that the text itself would not "promote" what it sought to prohibit. Thus, by summer 2013 despite protests from the Duma's Law Department, the Duma's Committee on Family, Women and Children headed by the Member of Parliament Yelena Mizulina drafted the ban of "non-traditional sexual relations" supported by all but one parliamentarian during voting.

Prohibited conduct

Despite common misconception, this piece of legislation is very straightforward and clear. The text of the law says that if someone promotes "non-traditional sexual relations" to minors, then they have to face legal consequences. The ways in which one may "promote" these relations are of two types:

- a) *personal presentation* (private conversation, teaching, public rally and campaigning) or

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⁵⁸ Federal'nyj zakon "O vnesenii izmenenij v stat'ju 5 Federal'nogo zakona 'O zashhite detej ot informacii, prichinjajushhej vred ih zdorov'ju i razvitiyu' i ot del'nye zakonodatel'nye akty Rossijskoj Federacii v celjah zashhity detej ot informacii, propagandirujushhej otricanie tradicionnyh semejnyh cennostej" [Federal Law "On Amendment of Article 5 of the Federal Law 'On Protection On Protecting Children from Information Harmful to Their Health and Development' and Other Normative Acts of the Russian Federation for the Purpose of Protecting Children from Information Advocating for a Denial of Traditional Family Values"] 29 June 2013, No. 135-FZ.

⁵⁹ Fines are from 4-5,000 RUR for private citizens to 40-50,000 RUR for officials to 800,000-1,000,000 RUR for companies.

⁶⁰ The regions that adopted the 'propaganda' legislation include: Arkhangelsk, Vladimir, Irkutsk, Kaliningrad, Kostroma, Krasnodar, Magadan, Novosibirsk, Ryazan, Samara regions, the city of St Petersburg, and the Republic of Bashkortostan.

⁶¹ Christopher Stroop, "Russian Social Conservatism, the WCF and the Global Culture Wars in Historical Perspective", *Political Research Associates*. 16 February 2016.

- b) *mediated presentation* (airing on the Internet or TV, in newspapers and magazines).

Moreover, an actual child must not be in fact exposed to the information in question: children in general should be able to access the information in order for it to be considered “propaganda”. This also uncovers the nature of “propaganda” in the text of the law: since a child is not required to be present at the event of alleged misdemeanour, then any consequences of the information to the child’s sexual orientation are of no legal relevance. In other words, although the law pretends to protect children from the “harm” of becoming gay, it does not matter if any particular child has been really converted to a gay person as a result of being exposed to a plaintiff’s political rally banner.

In the absurdist world of Russian legislators, this is a smart move because otherwise no case would stand trial. The legislators do mention that in result of children’s exposure to information about “non-traditional sexual relations” the following possibilities are projected: “formation of non-traditional sexual attitudes,” “attraction to non-traditional sexual relations,” “perverse impression of social equality between traditional and non-traditional sexual relations,” etc.

However, the practice of the law demonstrates that no proof of these effects on children is ever required in the courtroom. This law is about quality of information (its potential ability to convince someone that queer sexuality is a normal part of our society and even maybe an interesting practice to try), not about human capacity to experiment with one’s sexuality under external influence.

The law targets information: as a censorship law, it limits freedom of expression. Court experts are called upon to testify that a piece of information may potentially ignite children’s interest in homosexuality and therefore, it is a piece of “propaganda.” Hence, the “frightening” consequences of “gay propaganda” are nothing more than rhetorical ornaments that serve for the creation of moral panic.

The notion of “non-traditional sexual relations”

Furthermore, in the federal legislation, the formula “non-traditional sexual relations” does divert attention from a franker wording, such as St. Petersburg’s “propaganda of homosexuality, lesbianism, bisexuality and transgenderism”

(paraphrased “LGBT” acronym). Yet, the Supreme Court of the Russian Federation previously clarified that “traditional sexual relations” do not include lesbian experiences, male homosexuality, bisexuality and transgender issues, so these are considered “non-traditional”.

Besides, people rarely learn about law from legal books. Thus, while lawyers have the Supreme Court’s rulings to understand a correct interpretation of “non-traditional” sexuality, other people may rely on TV and newspaper articles, where this linguistic formula is heavily used in reference to LGBTQ questions. Therefore, no mistake shall be committed in interpretation of the law by legal professionals or lay people.

The effects and consequences of the law

This last point actually bares discussion of the effects of the law. First, as any censorship law and contrary to its said purpose, the bill 135-FZ generated a lot of interest to the object it censored. Studies show that there are more publications about queer sexualities in Russia after adoption of the law than before it.⁶² Certainly, some of them are meant to convince the public that it is in danger of “homosexuality”. This is especially so for materials aired on government-controlled media resources. Yet, other publications, on the contrary, try to convey a more LGBTQ-friendly approach and are published in “oppositional” or independent media. Some of these latter types of materials were subjected to administrative litigation, while others are freely available anyway. The thing is that in order to open an administrative case, state agencies have to show that a publication in question was meant for children. Hence, if a sign marked the said publication as intended for an “18+ age” audience, then a case cannot be built.

Secondly, the law also generated legal enforcement; it is not an inactive piece of legislation (see “The implementation of the law” below).

Finally, the law also has social effects beyond its legal implementation or censorship controversies. Most importantly, academic and activist studies registered growth of violence against LGBTQ populations in Russia after 2013.⁶³

The “propaganda” law is a symbolic articulation of the government’s hatred policy. The law officially established that some citizens of Russia are of less

⁶² Emil Edenborg, *Politics of Visibility and Belonging: From Russia’s “Homosexual Propaganda” Laws to the Ukraine War* (London: Routledge, 2017); Elena Sergeevna Pronkina, “Osobennosti LGBT-diskursa v rossiyskikh media, initsiirovannogo diskussiyami o regulirovani seksual’nosti” [Aspects of LGBT-Related Discourse in the Russian Media Today: The Case of Discussions Provoked by Regulations on Sexuality in Russia]. *Journal of Social Policy Studies* 1 (2016), 71-86.

⁶³ Aleksandr Kondakov, *Prestupleniya na pochove nenavisti protiv LGBT v Rossii* [Hate Crime against LGBT People in Russia] (St. Petersburg: The Centre For Independent Social Research, 2017); Human Rights Watch (HRW), *License to Harm: Violence and Harassment against LGBT People and Activists in Russia* (2014).

value than others (its text refers to “social equality” between sexual groups as a “perverse impression” one must be protected from). Thus, the law and official political commentaries around it spread and reinforced the idea that queer sexualities are wrong. Judging from the growth of violence against LGBTQ people in Russia, some bigots acted violently upon this conclusion.

Russia’s legislation in limiting LGBTQ populations’ freedom of expression also has an international dimension. As the result of this official policy of bigotry, many queer people in Russia felt especially threatened and endangered, even experiencing actual violence and persecution because of their sexual or gender identities. Therefore, some of them had to flee the country and seek for international protection in safer places.

On the other hand, the law generated positive responses in some Post-Socialist countries. Similar “anti-propaganda” laws have been considered in Poland, Lithuania, Latvia, Hungary, Moldova, Belarus, Ukraine, Kyrgyzstan, Kazakhstan and Armenia. All attempts have proved unsuccessful so far, but the issue brings these states closer together despite political rivalry and mutual grievances and therefore, may have further developments.

Conclusion

In sum, the 135-FZ law banning “propaganda of non-traditional sexual relations” to minors is a censorship legislation that limits freedom of expression by making neutral and positive information about LGBTQ topics a misdemeanor subjected to penalties. The text of the law is clear, and the procedure of its implementation does not require an actual child to be harmed in any way. This is why it is relatively easily enforced, especially in cases against media outlets and activists’ publications.

The legislation has a variety of other effects, beyond its implementation. One of the most important results of the spread of bigotry it generated is the growth of violence against queer populations in Russia. Since the law is in place, Russia is a less safe location for queer expressions than it has been before. Therefore, the law sends the country backwards on the line of progression to a more inclusive sexual citizenship.

The implementation of the law

Currently, for the years 2013-2018 there are at least 57 court rulings in the official state registrar of court decisions managed by the Ministry of Justice (unfortunately, not all court rulings appear in this database and not all of them are properly classified).

The graph shows the number of cases in which the law is cited in these rulings: the majority of court decisions are taken in respect to media publications.

These cases are most commonly brought to court by Russia’s censorship agency, *Roskomnadzor* (The Federal Service for Supervision of Communications, Information Technology and Mass Media). Cases regarding political rallies are initiated by LGBTQ activists who are denied the right to conduct a public rally by municipal authorities on the ground of the “propaganda” law and then challenge this decision in courts.

